

September 12, 2003

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: Implementation of the Pay Telephone Reclassification And
Compensation Provisions of the Telecommunications Act of 1996
CC Docket No. 96-128**

Dear Ms. Dortch:

IDT Corporation (“IDT”) files these *ex parte* comments in response to the recently filed *ex parte* comments of MCI, AT&T, Sprint and Qwest (collectively, “the IXC’s”). IDT is compelled to file these comments because – even while the company supports many of the comments set forth by the commenters – some of the positions, if adopted by the Commission, would have a harmful impact on IDT and other switch based resellers (“SBRs”). IDT also files these comments to inform the Commission because, while it might be reasonable for the Commission to assume that the IXC’s would work with their SBR customers in order to submit proposals that have the complete support of both industries, such assumption would be incorrect. To the best of IDT’s knowledge, neither IDT nor any other SBR was contacted to file joint comments that are acceptable to both industry groups.

Despite our concerns, IDT finds much to support in the IXC’s’ comments. Most importantly, all industry members recognize that the “first carrier pays” rule is unworkable, unreasonable and contrary to the Commission’s rules. SBRs, as the primary beneficiary of their toll free calls, must have the right to be responsible for their per call compensation. Similarly, IXC’s should not be burdened with SBRs responsibilities. IDT directs its comments toward those guidelines the IXC’s propose in order to permit SBRs to remit per call compensation directly to PSPs.

- **Verification of Reliability of Payphone Compensation System**

Several carriers, most notably MCI, suggest that SBRs should have to undertake an expensive, convoluted “certification” process in order to demonstrate that their SBR customers can accurately track their payphone calls. There is a fundamental, fatal flaw with this approach: SBRs should not be required to jump through any

“hoop” before they are permitted to remit their per call compensation, which is their lawful obligation. No other aspect of the telecommunications industry requires licensed carriers to make special attestations regarding particular aspects of their equipment and business practices for the benefit of an industry segment. Furthermore, it is inconsistent to place the obligation upon SBRs to remit per-call compensation and relieve IXC of their SBRs legal obligations, while still permitting IXC to determine whether SBRs may be permitted to remit compensation to PSPs.

There are practical flaws with this approach as well. For example, having corporate officers filing documents with the Commission attesting to the accuracy of their systems, places a considerable administrative burden upon the Commission. Also, the proposal does little to address the primary reason PSPs claimed they were not receiving per call compensation on SBR calls: that PSPs were not informed by IXC of the responsible party. As noted throughout IDT’s comments in this proceeding, the Commission should focus on ensuring that IXC submit sufficient contact information to PSPs regarding their SBRs, thereby permitting the PSPs to contact the SBRs for payment of per-call compensation.

- **IXCs Providing Call Detail Information to PSPs on their SBR Customers**

IDT supports requiring IXC to provide sufficient information to PSPs in order to permit PSPs to contact SBRs for per-call compensation. However, IDT believes that permitting IXC to provide to the PSP with call-related data, such as the number of calls to the SBR, compromises the confidential nature of the information. Additionally, such information does not assist the PSP in determining the calls subject to per call compensation and may, in fact, lead to disputes if the PSP assumes a completion percentage that is not consistent with the SBRs actual completion percentage. Moreover, this call data may be in dispute between the SBR and IXC and, having the IXC pass along disputed data only further ensures disputes with the PSP.

- **IXCs and SBRs Right to Contract for IXC Payment of Per-Call Compensation on Behalf of SBRs**

While IDT believes the outcome for SBRs that permit IXC to remit per-call compensation on their behalf will be positively crippling (paying based on a 100% completion rate, grossly inflated rates, etc.), IDT believes it is reasonable to permit both entities considerable freedom to contract, if both parties voluntarily choose to do so. *Critical* to this position, however, is the absolute right for SBRs to take responsibility to remit their per-call compensation, without any burdens such as third party accounting firm audits. SBRs must be permitted to inform their underlying IXC in a commercially reasonable manner that the SBR chooses to directly remit per-call compensation as of the effective date of the Order in this proceeding. Any language in existing contracts between SBRs and IXC which otherwise prevent this should be void as contrary to the Commission’s rules. If

the Commission grants SBRs this freedom, IDT would not oppose the various IXC proposals regarding freedom to contract between IXCs and their SBR customers that decline to take advantage of their freedom to pay PSPs directly.

- **Adopt a Caller Pays System**

For the reasons stated in its previous filings, IDT continues to assert that a “caller pays” system cannot be adopted in this proceeding and should not be adopted, as it is anti-consumer and contrary to the interests of the industry.

- **Timing Surrogates**

For the reasons stated in its previous filings, IDT continues to assert that timing surrogates are contrary to the Commission’s definition of a “completed call.” Moreover, due to the diversity of industry participants’ calling patterns and equipment, virtually any surrogate adopted will likely be seen as arbitrarily applied to certain industry members.

In accordance with Section 1.1206 of the Commission’s rules, this letter is being filed in the docket referenced above via the Commission’s ECFS system. Should you have any questions regarding the letter, please do not hesitate to contact me at (973) 438-4854 or Carl.Billek@corp.idt.net.

Sincerely,

/s/ Carl Wolf Billek
Carl Wolf Billek
IDT Corporation

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